

FINJAN, INC.,
Plaintiff,
v.
CISCO SYSTEMS INC.,
Defendant

Case No. 17-cv-00072-BLF

ORDER MODIFYING ORDER RE CISCO SYSTEMS, INC.'S ADMINISTRATIVE MOTION TO SEAL

[Re: ECF 56, 64]

Before the Court is Plaintiff Finjan, Inc.’s (“Finjan”) declaration in support of a motion to file under seal certain exhibits in connection with Defendant Cisco Systems, Inc.’s (“Cisco”) Motion to Dismiss Finjan’s Second Amended Complaint for Failure to State a Claim for Willful Infringement and exhibits filed in connection therewith. ECF 64. For the reasons discussed below, the Court MODIFIES its prior order at ECF 61, which disposed of the original motion to seal at ECF 54. *See* ECF 61.

I. LEGAL STANDARD

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Consequently, access to motions and their attachments that are “more than tangentially related to the merits of a case” may be sealed only upon a showing of “compelling reasons” for sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016). Filings that are only tangentially related to the merits may be sealed upon a lesser showing of “good cause.” *Id.* at 1097. In addition, sealing motions filed in this district must be “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b).

1 A party moving to seal a document in whole or in part must file a declaration establishing that the
2 identified material is “sealable.” Civ. L.R. 79-5(d)(1)(A). “Reference to a stipulation or
3 protective order that allows a party to designate certain documents as confidential is not sufficient
4 to establish that a document, or portions thereof, are sealable.” *Id.*

5 **II. DISCUSSION**

6 The Court has reviewed the declaration submitted by Finjan. ECF 94. The Court finds
7 that Finjan has articulated compelling reasons to seal certain portions of the submitted documents.
8 The proposed redactions are also narrowly tailored. The Court rules as follows on the various
9 exhibits sought to be sealed which the Court had previously denied sealing:

| <u>ECF No.</u> | <u>Document to be Sealed</u> | <u>Result</u> | <u>Reasoning</u> |
|----------------|------------------------------|---------------|--|
| 56-4 | Cisco’s Motion to Dismiss | DENIED. | Finjan, the designating party, has not provided any declaration in support of sealing. <i>See Hannah Decl. ¶¶ 3-5</i> , ECF 94. |
| 56-6 | Ex. C to Salceda Decl. | GRANTED. | Contains confidential information regarding Finjan’s intellectual property and business strategy, including terms of preferred stock purchase agreements between Finjan and Cisco. <i>Hannah Decl. ¶ 4</i> . |
| 56-8 | Ex. D to Salceda Decl. | GRANTED. | Contains confidential information regarding Finjan’s intellectual property and business strategy, including terms of preferred stock purchase agreements between Finjan and Cisco. <i>Hannah Decl. ¶ 4</i> . |
| 56-10 | Ex. E to Salceda Decl. | GRANTED. | Contains confidential information regarding Finjan’s intellectual property and business strategy, including information relating to business negotiations regarding Finjan’s products. <i>Hannah Decl. ¶ 5</i> . |

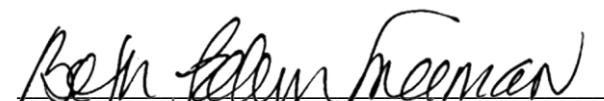
23 **III. ORDER**

24 For the foregoing reasons, the Court MODIFIES its order at ECF 61. Cisco’s motion at
25 ECF 54 is GRANTED IN PART and DENIED IN PART. Under Civil Local Rule 79-5(e)(2), for
26 any request that has been denied because the party designating a document as confidential or
27 subject to a protective order has not provided sufficient reasons to seal, the submitting party must
28 file the unredacted (or lesser redacted) documents into the public record no earlier than 4 days and

1 no later than 10 days from the filing of this order. Alternatively, this motion may be renewed so to
2 provide sufficient reasons in the supporting declarations no later than 10 days from the filing of
3 this order.

4 **IT IS SO ORDERED.**

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6 Dated: August 8, 2017

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BETH LABSON FREEMAN
United States District Judge

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